

SPRU Issues for Discussion – Based on JH Review of Evans’ 8/22/11 ACO Draft

A. Divergence from DOE -- Introduction / FOF / Enforcement Sections

- First Full Para on Page 2: 5 U.S.C. § 552(b)(5) (deliberative process privilege) . This paragraph, as currently written, tracks the language of § 61.12(c).

- Paragraphs 50 and 105: To accommodate DOE, could we add a sentence that says: “DOE has represented to EPA that the RAD NESHAP Criteria Document was internal to KAPL and was not widely distributed.” Per Tom Lieber, I don’t think we can say that the document was not widely distributed --- we have no way of knowing --- but I think we can say that they have *represented* to us that the document was not widely distributed.

- Paragraph 91: 5 U.S.C. § 552(b)(5) (deliberative process) .

- Paragraphs 97, 106 and 107: Our draft has different dates than the dates given by DOE. If we are correct, perhaps we should add pin cites showing that we are correct --- so that DOE doesn’t just repeat its comments again. Alternatively, if we are not correct, we should insert the correct dates.

- Paragraph 107: To accommodate DOE, can we add DOE’s point that the SPRU report did cover H2, even if the KAPL report did not?

- Paragraphs 117 and 118: Is the word “deficiencies” our word or DOE’s word? Also... Why aren’t we incorporating DOE’s changes to Paragraph 117?

- Enforcement Clause: DOE is concerned about duplicative injunctive relief. Anything we can say to reassure them?

B. Divergence from DOE -- Conclusions of Law Section

We allege 8 violations:

1. Violation of 40 C.F.R. § 61.93(f), by failing to evaluate the potential for radionuclide emissions at K-5 in order to determine whether, during the K-5 D&D, the K-5 release point would become subject to the emission measurement requirements of §§ 61.93(b) or (c). [Support = Paragraph 92]
2. Violation of 40 C.F.R. § 61.94(b)(3), by failing to provide in the 2006 RAD NESHAP annual report a description of the handling and processing of radioactive materials that occurred during the K-5 D&D. [Support = Paragraph 94]
3. Violation of 40 C.F.R. § 61.94(b)(4), by failing to identify K-5 as a release point in the 2006 RAD NESHAP annual report. [Support = Paragraph 95]

4. Violation of 40 C.F.R. § 61.93(f), by failing to evaluate the potential for radionuclide emissions at H-2 in order to determine whether, during the H-2 D&D, the H-2 release point would become subject to the emission measurement requirements of §§ 61.93(b) or (c). [Support = Paragraphs 110 and 111, 5 U.S.C. § 552(b)(5) (deliberative process privilege)]
5. Violation of 40 C.F.R. § 61.12(c) in connection with H-2 D&D, by failing to operate and maintain the source, including the air pollution control equipment, in a manner consistent with good air pollution control practices – as demonstrated by the causes discussed in the Type B report. [Support = Paragraphs 96-102]
6. Violation of 40 C.F.R. § 61.94(a), by failing to calculate the highest effective dose equivalent to any member of the public where there is a residence, school, business or office (stemming from 2009 annual report deficiencies). [Support = Paragraphs 74, 75, 114, 115, 118, and 123]
7. Violation of 40 C.F.R. § 61.94(a), by submitting separate annual reports for KAPL and SPRU, rather than a single report. [Support = Paragraphs 74, 75, 114, 115 and 123]
8. Violation of 40 C.F.R. § 61.94(b), stemming from violations 6 and 7 above. [Support = Derivative of violations 6 and 7?]

Issues:

- A. 5 U.S.C. § 552(b)(5) (deliberative process privilege)
- B. 5 U.S.C. § 552(b)(5) (deliberative process privilege)
- C. 5 U.S.C. § 552(b)(5) (deliberative process privilege)
- D. 5 U.S.C. § 552(b)(5) (deliberative process privilege)
- E. 5 U.S.C. § 552(b)(5) (deliberative process privilege) ?
- F. 5 U.S.C. § 552(b)(5) (deliberative process privilege)

C. The Consent Order Section

- Paragraph I: 5 U.S.C. § 552(b)(5) (deliberative process privilege)
- Paragraph IV: 5 U.S.C. § 552(b)(5) (deliberative process privilege)
- Paragraph V: 5 U.S.C. § 552(b)(5) (deliberative
- Paragraph VI: 5 U.S.C. § 552(b)(5) (deliberative process privilege)
- Paragraph VII: 5 U.S.C. § 552(b)(5) (deliberative process privilege)
- Paragraph IX: 5 U.S.C. § 552(b)(5) (deliberative process privilege)
- Paragraphs XI, XII and XIII: 5 U.S.C. § 552(b)(5) (deliberative process privilege)
- Paragraph XIV: 5 U.S.C. § 552(b)(5) (deliberative process privilege)

D. Other Substantive Issues

5 U.S.C. § 552(b)(5)

E. Purely Cosmetic Issues

- Para 5: should refer to Section 112, not Section 112(e).
- Para 36: delete comma at end of paragraph.
- Para 49: delete second period at end of paragraph.
- Para 74: should be HAPs not HAP.
- Para 91: should be Complete Report not Completion Report.
- Para 106: need comma in front of "until," rather than a period.
- Para 129: need space between C.F.R. and § symbol.
- Para VI of Consent Order: Should be VI not V.I.
- Para VII of Consent Order: Spacing is off --- extra line?
- Para XIV of Consent Order: Certification should be for compliance with I through XIII, not I through XV.
- After all substantive changes made, check page breaks.
- Add page numbers

portions of Building H-2, leaving behind and exposing contaminated process equipment to the open air.

102. On September 29, 2010, while WGI removed and resized the process equipment, an uncontrolled release and spread of radioactive contamination occurred at the H-2 D&D site and spread to offsite areas.

103. DOE-EM conducted complete site surveys to ~~The magnitude and significance of the contamination released were not fully identified~~ identify and understood the magnitude and significance of the contamination release. by DOE-EM for several days.

104. As a consequence of DOE-EM performance immediately following the September 29, 2010 event, DOE performed a critique of the H-2 D&D and documented its findings in the Type B report discussed above.

105. Building H-2 is designated in the RAD NESHAP Criteria Document as having the potential to emit doses greater than 0.1 mrem/yr without the use of pollution control equipment. The RAD NESHAP Criteria Document was internal to KAPL and was not widely distributed.

106. DOE, in the CY-2008 KAPL DOE RAD NESHAP Annual Report,
considered Building H-2 as a release point in accordance with DOE RAD NESHAP.

Commented [D7]: Suggest re-ordering to provide information chronologically.

~~406~~107. DOE included Building H-2, Building H-2 Stack and Building H-2 sump as release points in the CY-2009 KAPL DOE RAD NESHAP Annual Report until
March 31, 2009.

Commented [D8]: The building was turned over on April 1, 2009.

~~107. DOE, in the CY 2008 KAPL DOE RAD NESHAP Annual Report,~~
~~considered Building H-2 as a release point in accordance with DOE RAD NESHAP.~~

48. "With respect to complying with Section 1b of the EPA/DOE MOU on May 12, 2011, DOE submitted to EPA Region 2 a "Periodic Confirmatory Measurement Plan for the Department of Energy (DOE) Separations Process Research Unit (SPRU)." See May 12, 2011 letter from Thomas Johnson Jr. (DOE-EM) to Paul A. Giardina (EPA 2) regarding Section 1b of the EPA/DOE MOU. (DOE EPA/DOE MOU Ltr. A).

49. With respect to complying with Section 5a of the EPA/DOE MOU, on May 12, 2011, DOE identified to EPA Region 2, methods it will utilize to assess diffuse source emission at SPRU. See, May 12, 2011, letter from Thomas Johnson Jr. (DOEEM) to Paul A. Giardina (EPA 2), regarding Section 5 of the EPA/DOE MOU (DOE EPA/DOE MOU Ltr. B).

The RAD NESHAP Criteria Document

50. On June 28, ~~2008~~1999, DOE through a DOE contractor issued a document called the "Radionuclide NESHAPs Criteria for Evaluation of Potential Radionuclide Air Emissions Sources, New Construction of Radionuclide Air Emissions Sources, and Modification of Existing Radionuclide Air Emission Sources" (RAD NESHAP Criteria Document). The RAD NESHAP Criteria Document was internal to KAPL and was not widely distributed.

Commented [D1]: The date of this KAPL letter is 1999, not 2008.

51. The RAD NESHAP Criteria Document provides guidance to DOE in the evaluation of potential airborne radionuclide sources at KAPL. This guidance refers to the requirements of 40 C.F.R. § 61.93(b)(1) and (ii).

52. The RAD NESHAP Criteria Document at page 3 indicates that facilities that contain only fixed contamination or potential loose surface contamination in accessible areas and are not currently used for operations involving radioactive